

**Supplemental Letter of Findings: 01-20190863  
Individual Income Tax  
For the Year 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

### HOLDING

Individual submitted additional documents to establish that she abandoned her Indiana domicile before the 2013 tax year.

### ISSUE

#### I. Individual Income Tax–Domicile.

**Authority:** IC § 6-3-1-12; IC § 6-3-2-1; IC § 6-8.1-5-1; *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 3.1-1-22](#) (2017); [45 IAC 3.1-1-22.5](#) (2017).

Taxpayer protests the imposition of Indiana individual income tax.

### STATEMENT OF FACTS

Taxpayer is an individual who lived in Indiana prior to tax year 2013. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the 2013 tax year and thus owed Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of tax, interest, and penalty. An administrative hearing was scheduled but not attended by the Taxpayer and the matter was closed. Shortly thereafter, Taxpayer requested a rehearing due to a scheduling error, which the Department granted. Taxpayer submitted documentation prior to the telephonic rehearing which supported her position, resulting in this Supplemental Letter of Findings. Any additional facts will be provided as necessary.

#### I. Individual Income Tax–Domicile.

### DISCUSSION

In the course of reviewing its records, the Department found that Taxpayer had not filed a 2013 return and did not intend to abandon her Indiana domicile prior to 2013. As a result, the Department concluded that Taxpayer was required to file an Indiana Full-Year Resident Individual Income Tax return (Form IT-40) in 2013 and remit her Indiana income tax. Taxpayer disagreed and offered documentation to support her claim of abandoned domicile. The issue here is whether Taxpayer demonstrated that she was not required to file the IT-40 return for 2013 because she effectively abandoned her Indiana domicile prior to 2013.

As a preliminary matter, Taxpayer is required to demonstrate that the assessment is incorrect. IC § 6-8.1-5-1(c). Taxpayer must provide verifiable documentation explaining and supporting its challenge to the Department's assessment. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *see also Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax on the adjusted gross income of every Indiana resident. IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes [] any individual who was domiciled in this state during the taxable year." In other words, a person owes tax on their adjusted gross income if they were domiciled in Indiana during the tax year.

In 2017, the Department revised its regulations, clarifying the definition of a person's domicile for Indiana income tax purposes. These revisions also allow for more considerations in determining a person's domicile, which generally benefits a taxpayer when his domicile is in dispute. This final determination thereby applies these new regulations accordingly.

[45 IAC 3.1-1-22](#) (2017) defines domicile as follows:

- (a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state. A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.**
- (b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**
- (c) **In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**
- (d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

**(Emphasis added).**

Thus, a new domicile is not necessarily created when an individual moves to a place outside Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

[45 IAC 3.1-1-22.5](#) (2017) further outlines the factors in determining a person's domicile, as follows:

- (a) The department may require documentation from a person to evaluate domicile.
- (b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.
- (c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one (1) of the following:**
  - (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
  - (2) Voted in that state.
  - (3) Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.
  - (4) Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.
  - (5) **Had a place of employment or business in that state.**

**A person may rebut this presumption through the presentation of substantial contrary evidence.**

- (d) If a person's domicile is not resolved by subsection (c), the department may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:
  - (1) **maintained a driver's license or government issued identification card;**

- (2) was registered to vote;
- (3) registered a vehicle;
- (4) **claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;**
- (5) **assigned or maintained a mailing address;**
- (6) maintained bank accounts;
- (7) maintained active membership in a religious, social, cultural, or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

**(Emphasis added).**

The Department's initial assessment was based on a W-2 reporting a small amount of income in Indiana associated with Taxpayer's social security number. Taxpayer claims that her identity was stolen by a former friend to obtain this employment, but that the issue has been resolved. Taxpayer did not provide a police report.

During the rehearing process, Taxpayer submitted documents, including a copy of her Tennessee Driver's license, her U.S. Individual Income Tax Return (Form 1040A) for 2013, and her IRS wage and income transcript for 2013. These documents demonstrate that Taxpayer moved to Tennessee in 2012, worked in Tennessee during the 2013 tax year, and maintained an address in Tennessee in 2013 where Taxpayer lived with her two dependents. The Department's own records show that Taxpayer voluntarily surrendered her Indiana driver's license shortly before moving to Kentucky in 2011.

Given the totality of the circumstances, the Department agrees that the Taxpayer was not domiciled in Indiana for 2013 because her supporting documentation overcame the presumption established under [45 IAC 3.1-1-22.5\(c\)](#).

Since Taxpayer demonstrated that the Department's proposed assessment of income tax is not correct, the penalty and interest issues are moot.

**FINDING**

Taxpayer's protest is sustained.

August 20, 2019

*Posted: 10/30/2019 by Legislative Services Agency*  
An [html](#) version of this document.